Supreme Court, U.S.
FILED

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No. ____

In the Supreme Court of the United States

IN RE: SERGEY SELYUKOV AND ELVIRA ZDERCHUCK,

Petitioners.

ON PETITION FOR A WRIT OF PROHIBITION
TO THE MINNESOTA SUPREME COURT

PETITION FOR A WRIT OF PROHIBITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the State of Minnesota should be prohibited from continued prosecution of Petitioners Selyukov and Zderchuk based upon the guaranteed consequence of deportation, enforced by the Immigration and Naturalization Service, which would automatically follow if a state criminal conviction is entered against Petitioners.

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Parities Against Whom Relief is Sought

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CITATIONS OF OPINIONS

The opinions of the Minnesota Court of Appeals filed on February 6, 2001 and March 5, 2002 are unpublished. The orders of the Minnesota Supreme Court denying review of the Minnesota Court of Appeals decisions are dated April 17, 2000 and May 14, 2002.

BASIS FOR JURISDICTION IN SUPREME COURT

On May 14, 2002, the Minnesota Supreme Court issued an Order denying review of the March 5, 2002 decision of the Minnesota Court of Appeals in the matters of the State of Minnesota vs. Sergey Selyukov and Elvira Zderchuck.

Jurisdiction is conferred on this Court by 28 U.S.C.A. §1651(a), which authorizes the issuance of extraordinary writs, and Rule 20 of the Rules of the Supreme Court of the United States which authorizes the granting of an extraordinary writ when exceptional circumstances warrant exercise of the Court's discretionary powers and adequate relief cannot be obtained in any other form or from any other court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, § 8 of the Constitution of the State of Minnesota

> "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

Article III, § 1 of the Constitution of the State of Minnesota:

> "The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution."

8 U.S.C. § 1228 (a)(1):

> "The Attorney General shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities for aliens convicted of any criminal offense covered in section 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title. Such proceedings shall be conducted in conformity with section 1229a of this title ... in a manner which assures expeditious removal following the end of the alien's incarceration for the underlying sentence. Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."

STATEMENT OF THE CASE

Petitioner Elvira Zderchuck entered the U.S. as a refugee from Moldova in 1990 and subsequently became a permanent resident. Petitioner Sergey Selyukov entered the U.S. as a refugee from Chechnya in 1997, subsequently became a permanent resident and married Petitioner Zderchuck. Petitioners were jointly charged by Complaint in the State of Minnesota, Anoka County District Court with one count of Theft by False Representation in Excess of $35,000, and one count of Theft by Swindle in Excess of $35,000, alleged violations of Minn. Stat. § 609.52 subdivisions 2(3) and 2(4). (See Complain; Appendix H).

Prior to trial, Petitioner's moved to dismiss the case in the interests of justice as the alleged defrauded victim had been made whole and had suffered no actual loss. (See Motion to Dismiss; Appendix I). The motion to dismiss was denied by an Order on May 4, 2000. (See Findings of Fact and Order; Appendix A). Following Petitioner's Motion to Reconsider, the Anoka County District Court continued the criminal case for dismissal for a period of 20 years over the objection of the prosecuting attorney. (See Transcript dated September 13, 2000; Appendix B, pgs. 4-7). An appeal was taken by the State of Minnesota, and the case was remanded. (See Decision dated February 6, 2001; Appendix C). The Minnesota Supreme Court denied review of the Court of Appeals' decision. (Order dated April 17, 2000; Appendix D).

On remand from the Minnesota Court of Appeals in the cases of State of Minnesota vs. Sergey Selyukov and Elvira Zderchuk (Anoka County District Court Nos. K8-99-4774 and K6-99-4773), the Anoka County District Court concluded that the court has the inherent power to grant a

continuance for dismissal when special circumstances (including, but not limited to considerations of immigrant status and deportation consequences) exist and when necessary to the furtherance of justice.

"The passing of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act expanded the definition of 'aggravated felony', eliminated judicial review ... and provides that an aggravated felony is a particularly serious crime that renders an alien ineligible for asylum. ... The most critical consequence is that an alien who has committed an aggravated felony is **presumptively** subject to special extradited removal proceedings.

"Other jurisdictions have recognized the gravity of deportation as a consequence to a criminal conviction. ... If this Court insists that the Defendants' convictions be recorded, they would not only be subject to the sentence appropriate to their offenses, they would also be subject to **deportation**. The Defendants would be **forced** to return to countries torn by war, religious persecution, and ethnic persecution. Imposing such a sentence would effectively make this court an accessory to these atrocities. Furthermore, such consequences would be much more severe than those an equally situated American citizen would suffer. Surely that result is not 'justice' in the American sense of the word, nor does it reflect what America is truly about." (Order dated September 21, 2001; Appendix 5, pgs. 6-9, emphasis added).

The order on remand was appealed by the State, and the case was again remanded by the Minnesota Court of Appeals. (See Decision dated March 5, 2002; Appendix F). Review was again denied by the Minnesota Supreme Court. (See Order dated May 14, 2002; Appendix G).

Because their removal from the United States is guaranteed if convictions are entered against Petitioner's in

these cases, it was within the Anoka County District Court's inherent authority to dispose of the case as it saw fit in the interests of justice. Deportation has been deemed "more severe than a prison sentence ... [resulting] in families being divided or in 'loss of property or life; or of all that makes life worthwhile.'" Williams v. State, 641 N.E.2d 44, 48 (Ind. Ct. App. 1994), quoting Ng Fung Ho v. White, 259 U.S. 276, 284 (1922). Although neither the Minnesota Statute under which Petitioners have been charged, nor the Federal Statute that mandates Petitioners' removal if a conviction is entered are challenged as unconstitutional, the situation created by the convergence of the laws leaves little or no room for judicial discretion.

Review by Federal Courts of orders removing criminal aliens is limited (if not entirely cut off) by 8 U.S.C.§ 1252(a)(1)(C). Aliens convicted of aggravated felonies are also denied the ability to request asylum. 8 U.S.C. § 1158 subdivisions (b)(2)(A)(iii) and (b)(2)(B)(i). In essence, then, aliens convicted of aggravated felonies in state courts have little or no opportunity to challenge their automatic removal except by a Petition for Habeas Corpus. Meanwhile, state courts, guided by federal decisions, do not view deportation as a direct consequence to a criminal conviction. See, for example, Alanis v. State, 583 N.W.2d 573, 578 (Minn. 1998), citing to Brady v. United States, 397 U.S. 742, 755 (1970).

As such, the Anoka County district court is currently unable to dispose of this case in a manner consistent with the proper exercise of its discretionary authority, and without violating the separaion of powers, in the interest of justice. See Marbury v. Madison, 5 U.S. 137 (1803); Morrison v. Olson, 487 U.S. 654, 693 (1988); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)(concurring opinion)); In re Disbarment of Greathouse, 248 N.W. 735 (Minn. 1933);

Article I, § 8, Minnesota Constitution; and State v. Abbati, 493 A.2d 513, 518 (N.J. 1985). Under these extraordinary circumstances (Petitioners would be deported, with little or no opportunity for Federal Appellate Review and although they have made full restitution to the alleged victim, if a criminal conviction is entered against them), the State of Minnesota should be prohibited from its continued prosecution of Petitioners in these cases.

REASONS FOR ALLOWANCE OF WRIT

This writ should be allowed because a state appellate court has decided a question with important ramifications on the enforcement of federal law, creating a unique and exceptional circumstance from which no adequate relief can be obtained in any other form or from any other court and that warrants the exercise of this Court's discretionary power.

Dated: August 28, 2002

Respectfully submitted,

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APPENDIX

Appendix A: Findings of Fact and Order dated May 4, 2000

Appendix B: Partial Transcript of Proceedings, dated September 13, 2000

Appendix C: Minnesota Court of Appeals Decision, dated February 6, 2001

Appendix D: Minnesota Supreme Court Order, dated April 17, 2001

Appendix E: Order and Memorandum, dated September 21, 2001

Appendix F: Minnesota Court of Appeals Decision, dated March 5, 2002

Appendix G: Minnesota Supreme Court Order, dated May 14, 2002

Appendix H: Complaint

Appendix I: Motion to Dismiss in the Interests of Justice

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

v. FINDINGS OF FACT AND ORDER
Court File No. K6-99-4773

Elvira (NMN) Zderchuk,
Defendant.

The above-entitled matter came on for a motion hearing before the Honorable R. Joseph Quinn at the Anoka County Courthouse, Anoka, Minnesota on April 27, 2000. Bryan Lindberg, Esq. appeared on behalf of the State. Steven Meshbesher, Esq. appeared with and on behalf of the Defendant.

Now, therefore, based upon all records, files, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. That there are insufficient reasons for cause for dismissal under Minn. Stat. § 631.21.

Based upon the foregoing Finding of Fact the Court makes the following:

ORDER

1. That Defendant's motion for dismissal in the interest of justice is hereby denied.

2. That the Court's Memorandum is attached and made a part thereof.

* * *

DATED: May 4, 2000

BY: /s_____
R. Joseph Quinn
Judge of District Court
Tenth Judicial District

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

v. MEMORANDUM

Court File No. K6-99-4773

Elvira (NMN) Zderchuk
Defendant.

The above-entitled matter came on for a motion hearing before the Honorable R. Joseph Quinn at the Anoka County Courthouse, Anoka, Minnesota on April 27, 2000. Bryan Lindberg, Esq. appeared on behalf of the State. Steven Meshbesher, Esq. appeared with and on behalf of the Defendant.

DISCUSSION

After careful consideration this Court was unable to find special circumstances which allow for a dismissal in the interest of justice pursuant to Minn. Stat. § 631.21. The crime commited by Sergey Selyukov and Elivira Zderchuk (Defendants) was not one of impulse, rather, it involved a sophisticated course of criminal activity.The restitution that has been made is a minimum appropriate redress of the wrongs that the Defendants have committed and will be considered by any court that passes

sentence in the future. The restitution paid by the Defendants does not itself overcome their criminal activities.

The Court is aware of the fact that Ms. Zderchuk may be asked to return to her county of Chechnia; further, the Court is aware of the hostile political and social conditions that exist in Chechnia at present. There are times and circumstances when courts at this level consider consequences that would far outweigh the acts of the defendants before them. This Court does not believe that the crimes of these Defendants raise special circumstances and leaves the question of deportation to the Federal Authorities.

* * *

R.J.Q.

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

CONTINUANCE
FOR DISMISSAL
FILE NO. K8-99-4774 Sergey

vs.

Mikhaylovich Selyukov,
Defendant.

TRANSCRIPT OF PROCEEDINGS in the above-entitled matter before the Honorable Lynn C. Olson, Judge of District Court, on September 13, 2000, at the Anoka County Courthouse, Anoka, Minnesota.

* * *

APPEARANCES:

Sean C. Gibbs, Assistant County Attorney, appeared on behalf of the State of Minnesota;

Steven J. Meshbesher, Attorney at Law, appeared with and on behalf of the defendant;

Gennady,Bronshteyn, Interperter;

C. DuSchane, Reporter.

(Whereupon, an off-the-record discussion was had in chambers and then the proceedings continued as follows in open court:)

THE COURT: Do you want to swear him in? Do you want to raise your right hand? (Whereupon, the interpreter was duly sworn.)

THE COURT: All right. This matter is before the Court for trial. We have two defendants here and is it in-- is it efficient and reasonable to deal with them both at the same time or should we take them one at a time?

One at a time I-- I would think.

MR. MESHBESHER: Your Honor, given the posture of the case right now, if we take them one at a time, that would probably make a cleaner record.

THE COURT: All right. Then-

MR. MESHBESHER: For no particular reason, I think Sergey Selyukov's name is first on the complaint. Maybe we should take his first.

THE COURT: All right. Mr. Gibbs, you agree with that?

MR. GIBBS: That's fine. Thank you.

THE COURT: All right. We've had a good deal of discussion about this case. And I have made a part of the court file record, along with a motion that was filed by Mr. Meshbesher on behalf of Mr. Selyukov, an investigative report which was done by I believe Tom Rachel of the Anoka County Attorney's office, dated March 23rd of this year, 2000;

A letter from William Fisher of Gray, Plant, Mooty, the attorneys for the-- the victim in this case, Sheet Metal Workers Federal Union—Credit Union, dated October 27th, 1999;

A letter from Mr. Meshbesher, along with a-essentially a social history of the defendant dated July 7th, 1999;

And, lastly, a letter from Michael Davis, Attorney at Law, of Davis, Dodd, Levine and Miller, who are immigration attorneys, and his-- and the date of that letter is July 8th, 1999.

I've reviewed the file and the complaint and all of the underlying papers in the file and I'm ready to proceed today, first of all, with what the Court deems to be the appropriate disposition in this case.

And, Mr. Meshbesher, I will ask you at this time if you would question your client as to his waiver of a speedy trial.

MR. MESHBESHER: Thank you, your Honor. Sergey, this case has been pending for some time now. Because of the unique negotiation I've been able to conclude on your behalf, you have to knowledge on the record that you understand that under our system you could demand to have a speedy trial or to have a trial within a period of time if you chose to.

But I have been able to get this case where it will be continued, not indefinitely but for a period of time that exceeds your right to a speedy proceeding. And to take advantage of this conclusion, you have to knowledge now that you're willing to waive any right that you have for a speedy proceeding.

Do you so waive your right to a speedy proceeding?

THE DEFENDANT: Yes.

THE INTERPRETER: Yes.

THE COURT: All right. Mr. Gibbs, I have indicated to you in chambers my intention to continue this matter for dismissal and I've indicated the reasons. And I understand that you, on behalf of the State, will be objecting. And so I think at this time it would be appropriate for you to state your objection and your reasons for your objection.

MR. GIBBS: Thank you, your Honor.

The State respectfully objects to the continuance for dismissal that was-- that the Court has indicated it will give.

Just addressing-- perhaps Mr. Meshbesher misspoke when he stated "negotiation." There's no negotiation between the State and the defense attorney.

The State does object to the continuance of dismissal, specifically with regard to this defendant. He is twenty-five years old.

This offense is much more serious than a typical theft offer thirty five thousand dollars.

It's a theft of ninety nine thousand dollars. That could be considered an aggravating factor under the sentencing guidelines.

It's also-- potentially would qualify as a major economic offense, another aggravating factor under the guidelines.

It also appears to be, from the facts, a complex criminal scheme.

And, finally, the State objects because this is not different than any other theft crime that we generally see in Anoka County. In fact, it's much more serious.

And, for those reasons, we respectfully object to this continuance for dismissal.

THE COURT: Thank you, Mr. Gibbs.

And, before I proceed, is there anything else you want to say, Mr: Meshbesher?

MR. MESHBESHER: Other than the unique facts that I presented to the Court off the record in chambers: That Sergey has been in the United States less than five years. He's from a war torn country. It's called Chechnya, which is a portion of the former Russian Empire.

He is considered the minority because of his Christian faith in that country. And they fled under very harsh circumstances just to save their lives.

They had come to this country with nothing. He's a person with absolutely no criminal background.

He's married. His wife is pregnant. And he's an extremely hard worker at any job that he has. And right now

he's currently working as a commercial painter. And he works-- his employer literally loves him because of his work ethic. Thank you.

THE COURT: All right. Mr. Selyukov, I'm going to continue this matter for dismissal for a period of twenty years. In other words, you are going to be on probation for twenty years.

The conditions I'm going to set for you are that, first of all, obviously, you have no-- no violations of the law. Now, I'm not talking about speeding tickets or parking tickets, but I mean serious violations of the law;

That, in addition-- that you complete five hundred hours of community work service;

That, in addition, you pay a fine-actually, it wouldn't be a fine-- it would be costs of prosecution in the amount of five hundred dollars;

Now, for the community work service and for the fine, I recognize that I'm also going to be giving the same-- these same conditions to your wife and I know that you will have somewhat of a family hardship for some time in that you're having a child and that your income is somewhat limited.

So I will have you set up the completion of both the costs, as well as the community work service, with your probation officer over a reasonable period of time. And I would expect that that time will probably be over a period of years, but I do expect you to complete it. Do you understand?

THE DEFENDANT: Yes.

THE COURT: I will put on the record now why I am giving you such a-- an unusual disposition. First and foremost, what makes this case quite different is that the victim has been made whole.

THE INTERPRETER: Excuse me?

THE COURT: Whole. W-H-0-L-E. All—

THE INTERPRETER: Judge, from the interpreter, I don't understand.

THE COURT: Thank you. The victim has been entirely paid back.

Secondly, the legal costs associated with the retrieval of the money that was taken were minimal and that was because of your aggressive cooperation through your attorney.

Based on everything else I know about you, I believe that you are amenable to probation and that 12 you have shown extreme remorse for what you have 13 done. I also believe that this disposition is the most reasonable disposition in this case in the interests of justice.

Is there anything else, Mr. Meshbesher or Mr. Gibbs, you wish to say?

MR. GIBBS: No. Thank you.

MR. MESHBESHER: Your Honor, the only thing I wanted to point out for the record-- I may be incorrect in stating this-- but the Court's stated his probation would be twenty years and I thought it was-you were going to say, "up to twenty years--"

THE COURT: I was.

MR. MESHBESHER: -- so you have the discretion to reduce it if you choose to.

THE COURT: That's correct. Anything else?

MR. MESHBESHER: Nothing. MR. GIBBS: No.

THE COURT: All right.

MR. MESHBESHER: Oh. This is a technical matter, your Honor. The bail bond-- at today's conclusion, I'd ask that that be discharged because the family have put up all their-- everything they own and it's hindering them from living right now.

THE COURT: Since the restitution has been paid in full, there is no reason to keep the bail bond in place, so I will discharge the bail bond.

I didn't ask if there was any objection from the State, Mr. Gibbs.

MR. GIBBS: That's fine, your Honor.

THE COURT: All right.

MR. MESHBESHER: Thank you, your Honor.

THE CLERK: Your Honor, this would be like you want-- you don't want two fifty on one count, two fifty on the other one?

THE COURT: Oh. I keep forgetting there are two counts. Right. No. This is for the whole thing.

THE CLERK: Okay.

THE COURT: So it's just-- yeah. THE CLERK: Okay.

THE COURT: Maybe one more thing I should say. There-- I neglected to say that there are two counts here and the continuance for dismissal is on both counts.

All right. This matter then has concluded. And you will need to talk with corrections before you leave today.

MR. MESHBESHER: Thank you, your Honor.

THE COURT: You're welcome.

(Whereupon, the proceedings were concluded.)

* * *

REPORTER'S CERTIFICATE

I, Christine M. DuSchane, Official Court Reporter in and for the County of Anoka, State of Minnesota, hereby certify that the preceding transcript constitutes a true and complete transcription of my Stenographic notes taken at the time and place hereinbefore set forth.

Dated: September 19, 2000

S/

Christine M. DuSchane
Court Reporter

2001 WL 96180

(Cite as: 2001 WL 96180 (Minn.App.)

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

STATE of Minnesota, Appellant,

v.

Sergey Mikhaylovich SELYUKOV, Respondent,
Elvira (NMN) Zderchuk, Respondent.

Nos. C5-00-1617, C9-00-1619.

Feb. 6, 2001.

Mike Hatch, Attorney General, St. Paul, MN; and Robert M.A. Johnson, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, MN, for appellant.

Steven J. Meshbesher, Meshbesher & Associates, Minneapolis, MN, for respondent.

Considered and decided by WILLIS, Presiding J., SHUMAKER, and HUSPENI, JJ.

UNPUBLISHED OPINION

HUSPENI. [FN*]

FN* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, ß 10.

*1 In these consolidated appeals, appellant seeks review of trial court orders continuing for dismissal respondents' charges of theft by swindle and theft by false representation. Appellant argues that respondents' payment of restitution, amenability to probation, age, and remorse are not "special circumstances" justifying a stay of adjudication or continuance for dismissal of their convictions. Appellant also maintains that the unexpressed reason for the decision of the trial court was the possible deportation of respondents if judgments of conviction were entered. Because no "special circumstances" involving a clear abuse of prosecutorial discretion are present in these cases, we reverse.

FACTS

The facts in these cases are not in dispute. Respondents Sergey Mikhaylovich Selyukov and Elvira Zderchuk were charged with theft by false representation in excess of $35,000 in violation of Minn.Stat. ß 609.52, subds. 2(3)(i), 3(1) (1998), and abetting theft by swindle in excess of $35,000 in violation of Minn.Stat. ß 609.52, subds. 2(4), 3(1) (1998). Selyukov opened a checking account at Sheet Metal Worker's Credit Union (Credit Union), and made deposits totaling $99,000 into that account using checks written by Zderchuk on a defunct Twin City Federal account formerly held by her. Selyukov withdrew funds from the Credit Union account in the form of money orders and checks payable to himself or Zderchuk. Selyukov admitted knowing that the Twin City Federal account was closed and Zderchuk admitted knowing that there was no money in the Twin City Federal account to cover the checks she wrote to Selyukov.

At the omnibus hearing, respondents moved to dismiss the charges based upon their payment of restitution and the likely deportation consequences of a conviction. The omnibus court found that no special circumstances existed to justify dismissal, stating that restitution is not a substitute for criminal liability and leaving the issue of deportation to the federal authorities.

Respondents again moved for dismissal before the trial court. The court denied the motion, but, over the objection of appellant State of Minnesota, continued the cases for dismissal for up to 20 years on conditions that respondents remain law abiding and of good behavior, perform 500 hours of community work service, and that they pay $500 toward costs of prosecution. These appeals resulted.

DECISION

A ruling on a request for a continuance is within the district court's discretion. *State v. Rainer*, 411 N.W.2d 490, 495 (Minn.1987). The district court has the inherent power to order the functionally equivalent dispositions of continuance for dismissal or stay of adjudication, even over the prosecutor's objection, where the case involves "special circumstances." *State v. Prabhudail*, 602 N.W.2d 413, 414 (Minn.App.1999). Such "special circumstances," however, must involve an abuse of prosecutorial discretion in charging; absent this, "the judiciary is powerless to interfere with the prosecutor's charging authority." *State v. Krotzer*, 548 N.W.2d 252, 254 (Minn.1996) (citation omitted). The power of a trial court to stay adjudication or grant a continuance for dismissal has been very narrowly construed in cases

subsequent to *Krotzer*. The court has cautioned that the inherent judicial authority recognized in *Krotzer* was to

> ***2** be relied upon *sparingly* and only for the purpose of avoiding an injustice resulting from the prosecutor's *clear abuse of discretion* in the exercise of the charging function. *State v. Foss*, 556 N.W.2d 540, 541 (Minn.1996) (emphasis in original).

In the present cases, the trial court cited several factors in granting the continuance for dismissal, including the fact that respondents made full restitution to the credit union and that the legal costs of this recovery were minimal. The court also recognized that the respondents were remorseful and seemed to be amenable to probation, [FN1] noted that respondent Zderchuk was only 18 years old at the time of the offense, and stated that a continuance was necessary to further the interests of justice.

> FN1. Both charged offenses are ranked as severity level VI under the Minnesota Sentencing Guidelines. Each respondent had a criminal history score of 0. The presumptive sentence is 21 months stayed.

Our review of the factors listed by the trial court compels us to conclude that none qualify as the "special circumstances" demanded by the Minnesota cases addressing the exercise of judicial authority to stay adjudication or grant continuances for dismissal. There is no allegation, let alone any evidence, that the prosecution clearly abused its discretion. Absent any abuse of that discretion, we are unable to identify an injustice. The factors cited by the trial court would certainly have been

appropriate ones to be considered in the event leniency was granted in sentencing. *See* *Foss*, 556 N.W .2d at 541 (suggesting that the trial court could stay imposition of sentence with minimal conditions to reflect the less-serious nature of a particular charge for misdemeanor assault). But affirming the continuance for dismissal in these cases would require that this court reject strong existing precedent to the contrary. This we are unable to do.

Finally, present in these cases is a factor raised repeatedly before the trial court, but not cited by the court in its continuance for dismissal: the probable deportation of respondents if their guilt was adjudicated. Throughout the trial court proceedings, respondents argued the potentially devastating consequences of deportation to Chechnya, a country torn by war, and argue here that if the trial court considered deportation consequences in making its decision, it was only because the interests of justice required such consideration.

Appellant argues that the trial court presumably was aware that, absent an abuse of prosecutorial discretion, deportation, a collateral consequence of conviction, could not be deemed a "special circumstance." While the extent to which possible deportation influenced the trial court's decision is not evident, we must agree with appellant's characterization of the law on this issue. In *Prabhudail,* a divided panel of this court (a strong and articulate dissent urged that stays of adjudication and continuances for dismissal should be reviewed under an abuse-of-discretion test applied against the judge, not the prosecutor), reversed a trial court continuance for dismissal that had as its asserted "special circumstance" the possible deportation of the accused. 602 N.W.2d at 414. In light of

Prabhudail, the trial court here prudently did not list deportation as a factor supporting continuance for dismissal. There is no doubt, however, that deportation consequences were an important issue in these cases.

***3** In the absence of "special circumstances" involving a clear abuse of prosecutorial discretion, we reverse the continuances for dismissal granted by the trial court.

Reversed.

2001 WL 96180, 2001 WL 96180 (Minn.App.)

END OF DOCUMENT

STATE OF MINNESOTA
IN SUPREME COURT

C5-00-1617 and C9-00-1619

State of Minnesota,

Respondent,

vs.

Sergey Mikhaylovich Selyukov,

Petitioner (C5-00-1617),

Elvira (NMN) Zderchuk,

Petitioner (C9-00-1619).

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Sergey Mikhaylovich Selyukov and Elvira (NMN) Zderchuk for further review be, and the same is, denied.

Dated: April 17, 2001

BY THE COURT:

S/

Kathleen A. Blatz
Chief Justice

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff

vs.

Sergey Mikhaylovich Selyukov, and Elvira (NMN)Zderchuk,

ORDER

Court File No: K8-99-4714
K6-99-4773

Defendants.

The above-entitled proceeding came on for re-sentencing on September 21, 2001, before the Honorable Lynn C. Olson, Judge of District Court, pursuant to the April 23, 2001 Judgment of the Minnesota Court of Appeals reversing the prior orders dated September 13, 2000. The Minnesota Supreme Court denied further review by order dated April 17, 2001. Defendant Sergey Mikhaylovich Selyukov and Defendant Elvira Zderchuk were represented by Mr. Steven J. Meshbesher, Attorney at Law, Meshbesher & Associates, 225 Lumber Exchange Building, l0 South Fifth Street, Minneapolis, Minnesota 55402. The State was represented by Mr. Paul Young, Assistant Anoka County Attorney, Anoka County Government Center 2100 3rd Avenue Anok Minnesota 55303.

The Court, having considered arguments of counsel, the complaint and being fully advised as to the facts, hereby makes the following:

FINDINGS OF FACT

1. Defendants Selyukov and Zderchuk are charged with theft by false representation in excess of $35,000 in violation of Minn.Stat. § 609.52, subds. 2(3)(i), 3(1) (1998}, and

abetting theft by swindle in excess of $35,000 in violation of Minn.Stat. § 609.52, subds. 2(4), 3(1} (1998}.

2. Defendant Selyukov opened a checking account at Sheet Metal Worker's Credit Union (SMWCU).

3. Defendant Selyukov made deposits into the SMWCU account totaling $99,000 using checks written by Defendant Zderchuk on a closed Twin City Federal (TCF) account formerly held by her.

4. Defendant Selyukov withdrew funds from the SMWCU account in the form of money orders and checks payable to himself or Defendant Zderchuk.

5. Defendant Selyukov admitted knowing that the TCF account was closed.

6. Defendant Zderchuk admitted knowing that the TCF account did not contain sufficient funds to cover the checks she wrote to Defendant Selyukov.

7. The Defendants have made full restitution to the credit union.

8. Defendant Zderchuk was born in the Republic of Moldova; her family was impelled to escape the country due to intense religious and ethnic persecution.

9. Defendant Zderchuk entered the United States as a refugee with her family in 1990 at the age of 10, subsequently she became a permanent resident, and she has not left the United States since her initial admission date.

10. Defendant Selyukov was forced to flee from a community situated 100 miles north of Grosni, Chechnia due to war conditions in that area.

11. Defendant Selyukov entered the United States as a refugee in 1997 at the age of 22, and he is now a lawful permanent resident.

CONCLUSIONS OF LAW

1. The court has the inherent power to grant a continuance for dismissal where "special circumstances" exist, and it is necessary to the "furtherance of justice."

2. The immigration considerations present in these cases constitute the "special circumstances" necessary to justify alternative dispositions.

ORDER

1. As to Defendant Selyukov, the matter shall be continued for dismissal and the Defendant placed on probation for a period up to twenty years under the following conditions:
    a. Remain law abiding and of good behavior (excluding minor violations such as a parking ticket or a speeding ticket);

    b. Complete five hundred hours of community work service; and

    c. Pay costs of prosecution in the amount of $500.00. Said amount covers both

2. As to Defendant Zderchuk, the matter shall be continued for dismissal and the Defendant placed on probation for a period up to twenty years under the following conditions:
    a. Remain law abiding and of good behavior (excluding minor violations such as a parking ticket or speeding ticket);

b. Complete five hundred hours of community work service; and

c. Pay costs of prosecution in the amount of $500.00. Said amount covers both charges.

3. The Court Administrator shall advise the parties of this present Order by mailing a copy of the same to the parties, whose names and addresses are set forth on the first page of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 9/21/01 BY THE COURT:

S/
Judge of District Court

Let the attached Memorandum be part of the order.

MEMORANDUM

A stay of adjudication and a continuance for dismissal are functionally equivalent. State v. Prabhudail, 602 N.W.2d 413, 414 (Minn.Ct.App.1999), *rev. denied* (Minn. Jan. 18, 2000) (citations omitted). Judge Randall in an eloquent dissent observed, "The sentencing device, one of the more caring and thoughtful discretionary tools in a district court judge's arsenal, is stay of adjudication/continuance for dismissal." Prabhudail at 416. Stays of adjudication and continuances for dismissal even over the objection of the prosecutor are within a district court's "inherent judicial power." State v. Krotzer, 548 N.W.2d 252, 254-55 (Minn. 1996). Subsequent to the Krotzer decision, the Supreme Court attempted to clarify its holding stating that stays must "be relied upon sparingly and only for the purpose of avoiding an injustice resulting from the prosecutor's clear abuse of discretion in the exercise of its charging function," while at the same time noting that the district court "may stay an adjudication of guilt over the prosecutor's objection without violating the separation of powers doctrine." State v. Foss, 556 N.W.2d 540, 541(Minn.1996).

Judge Randall, writing for the majority, discussed the conflicts with the two statements in Foss and observed that two myths had developed: first, the myth that a stay of adjudication (and presumably, a continuance for dismissal) is not a sentence; second, the myth that Krotzer concerned a charging issue. State v. Lattimer, 624 N.W.2d 284, 286-87 (Minn.Ct.App. 2001), *rev. denied* (Minn. May 15, 2001). Judge Randall emphasized, "Krotzer was a sentencing issue, not a charging issue. Attempts to turn Krotzer into anything other than what it was means you build a string of cases that are a pyramid of cards standing on loose sand and it will eventually, as it must, collapse under its own weight of non-logic." Lattimer at 288. The Krotzer court itself recognized, "the prosecutor's power to file charges and prosecute and

individual-was not infringed upon here," and "the final disposition of a criminal case is ultimately a matter for the presiding judge." Krotzer at 254. As in Lattimer and Krotzer, the charges in these cases were appropriate for the conduct, and that is not an issue. What is at issue is the **disposition** of these cases.

Judge Randall's dissent in Prabhudail further underscores the problems with the initial test set out in Krotzer and offers a logical solution:

> It started with nothing in the Krotzer record to support it, and went nowhere from there! A test resting on "prosecutorial discretion" is impossible to define and impossible to administer. That is the root of the divisiveness between district and appellate courts since Krotzer and its progeny have been published.
>
> ***
>
> When stays of adjudication/continuances for dismissal are viewed as what they truly are, a type of **sentence**, then concededly there is no interference with the prosecution's power to charge, because sentencing is an acknowledged function for the judge.
>
> ***
>
> Let the prosecution charge whatever they want. That is their role. The defense attorney's role is to defend. If there is a conviction, it is the judge's role to sentence. The State of Minnesota has always done it that way and enjoys a nationwide reputation for fairness and stability in its criminal justice system. The reasoning behind appellate review in *Krotzer's* progeny is a blot on that reputation.

Prabhudail at 418-20 (citations omitted) (emphasis added).

Finally, Judge Crippen, concurring specially, formulated a meaningful analysis of what really is at issue in Krotzer and the cases that address the same issue:

> What was at issue in those cases was whether the trial court had cause to strongly question whether the prosecution erred in its insistence that a conviction be recorded...The authority of Krotzer, never subsequently corrected, extends to cases where the prosecutor abuses its executive discretion by rigidly objecting to a disposition without adjudication of the offense, where the trial court is. empowered to act differently if the special circumstances of the case permit the court's strong conviction that this is in the furtherance of justice. **We should not employ a distorted reading of Foss to create instead an unbridled discretion of prosecutors.**

Lattimer at 291-92 (emphasis added).

Clearly, it follows that a court may craft a disposition congruent with the-furtherance of justice where special circumstances mandate it, despite the fact that there has been no prosecutorial abuse of discretion in **charging**.

The next issue is whether deportation is a special circumstance that justifies a continuance for dismissal. In 1996, the Court of Appeals had the occasion to review this issue in State v. Vahabi, where the majority held that when the normal criminal sentence would subject the defendants to deportation for acquiring a criminal record, "[t]his presents 'special circumstances' of a different kind, but well within the rationale of *Krotzer*."1996 WL 509690, *2. In Vahabi, Judge Harten filed a dissenting opinion noting, "the consequence-possible deportation-is not an integral part of the conviction for the crime charged. Rather, deportation is a separate personal consequence that could affect appellants by operation of the federal immigration laws" 1996 WL 509690, *2 (Minn.Ct.App.). The Supreme Court of Minnesota granted review and issued an order reversing the Court of Appeals decision, finding it important that deportation "is an

unfortunate **indirect** result of the convictions...." 1996 WL 940208 (Minn.) (emphasis added).

In 1998, the *Court of Appeals held that* deportation is not a special circumstance justifying a continuance for dismissal because it does not result from a clear abuse of the prosecutor's discretion in the exercise of the charging function since it is a **collateral** consequence of a criminal conviction. Prabhudail at 414 (citations omitted) (emphasis added).

In making these decisions, it appears that the analysis made by Minnesota courts turns on whether deportation is a direct or collateral consequence of the conviction. In the deportation context, the collateral / direct consequences dichotomy was first addressed in Alanis v. State. 583 N.W.2d 573 (Minn. 1998). In Alanis, the defendant pleaded guilty to three felony offenses, including a second-degree controlled substance crime, unlawfully obtaining Aid to Families of Dependent Children, and unlawfully obtaining food stamps. Id. He also pled guilty to two misdemeanor offenses of driving after revocation and possession of a small amount of marijuana. Alanis at 575. The defendant sought to withdraw his guilty pleas and filed a petition for post conviction relief claiming that his pleas were not intelligent because he was not warned of the possible immigration consequences of pleading guilty. Alanis at 578.

The court found that deportation is a collateral consequence of a guilty plea and reasoned: "deportation is not a direct consequence of the guilty plea because deportation is neither definite, immediate, nor automatic." Alanis at 578-79. Finally, the court observed that the decision to commence deportation proceedings is wholly within the discretion of the INS, and the process leading to deportation involves complex administrative procedures. Id.

While the Alanis courts observations may be technically accurate, the reality of the situation makes deportation virtually automatic for persons convicted of so-

called "aggravated felonies." *See* Non-Citizens Guilty Pleas and Ineffective Assistance of Counsel Under the Arizona Constitution, Timothy B. Jarek, 7 Ariz. L. Rev. 549 (Summer 2000); and Deportation and Justice: A Constitutional Dialogue, Daniel Kanstroom, 41 B.C.L. Rev 771 (July 2000). The passing of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act expanded the definition of "aggravated felony'," eliminated judicial review (with the exception of habeas corpus relief) of orders of removal against criminal aliens, and provides that an aggravated felony is a particularly serious crime that renders an alien ineligible for asylum 3. IIRIRA also eliminated § 212(c), a provision that allowed aliens to apply for a discretionary waiver of deportation; the section was replaced with a new section. excluding from the class anyone "convicted of an 'aggravated felony'". INS v. St Cyr,121 S.Ct. 2271, 2276-78 (2001); see INA § 240A. Furthermore, cancellation of removal is not available to an alien who is inadmissible or deportable from the United States if the alien has been convicted of an aggravated felony. INA § 240A. The most critical consequence is that an alien who has committed an aggravated felony is presumptively subject to special expedited removal proceedings. INA § 238. The crimes that the Defendants are charged with constitute aggravated felonies within the meaning of the Act..

Curiously, in the Rules of Criminal Procedure, Minnesota has now seen fit to require a court to make the following inquiry before accepting a plea of guilty:

> Whether defense counsel has told the defendant and the defendant understands: ...That if the defendant is not a citizen of the United States, a plea of guilty to the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

Minn.R.Crim.P.15.01(10)(c). Although deportation may be termed a "collateral consequence," the Minnesota Supreme Court has deemed this consequence severe enough to warrant this special provision in the rules. It follows that the distinction between "collateral" and "direct" consequences has eroded to the point that this analysis is without value in determining whether deportation consequences constitute special circumstances to justify an exercise of inherent judicial authority in alternative sentencing. Instead, the court should look at each situation on a case-by-case basis.

Other jurisdictions have recognized the gravity of deportation as a consequence to a criminal conviction. The Supreme Court of Illinois, in an opinion holding that where defense counsel provides "misleading advice on the **crucial** [1]consequence of deportation", and the defendant relies on that advice in entering a guilty plea, the plea is deemed not intelligent and knowingly made and therefore not voluntary; the defendant is then entitled to withdraw his plea. People v. Correa, 485 N.E.2d *307, 310-12 (Ill. 1985), reh'g denied* (Ill. Dec. 2, 1985) (emphasis added). The CC Correa court observed: "Deportation, although collateral, is, nonetheless, a **drastic** consequence. In most cases this collateral consequence is more severe than the penalty imposed by the court in response to the plea." Cornea at 311 (citations omitted) (emphasis added).

The Court of Appeals of Indiana, Fifth District held, "The possibility of deportation, which has been termed 'the equivalent of banishment,' is a consequence which undoubtedly would enter into the decision-making process of a defendant considering a plea bargain." Williams v. State, 641 N.E.2d 44,48 (Ind.App.1994) *transfer denied (Jan. 11,1995)* (citations omitted). The Williams court noted,

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[1] INA § 101 (a) (43).
[2] INA § 242.
[3] INA § 208(b)(2)(A)(ii) and § 208(b)(2)(b)(i).

"Deportation may be a penalty more severe than a prison sentence. Deportation may result in families being divided or in 'loss of property or life; or of all that makes life worthwhile.' It has been called a 'savage penalty,' 'a life sentence of exile.'" Williams at 49 (citations omitted). Finally; the Williams court held, "It is our firm belief that the consequence of deportation, whether labeled collateral or not, **is of sufficient seriousness** that it constitutes ineffective assistance for an attorney to fail to advise a ton-citizen defendant of the deportation consequences of a guilty plea." Williams at 49 (emphasis added).

In Minnesota, Judge Randall, in his Prabhudail dissent emphasized, "Deportation is tantamount to a type of life imprisonment, meaning a lifetime of exile from this country." Prabhudail at 417.

According to the information presented by the Defendants in the case at bar, they were both admitted to the United States as refugees. The Immigration and Nationality Act requires an applicant for refugee status to meet the definition o a refugee contained in INA § 101(a)(42), which includes the possession of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." Additionally, both Defendants assert that their families are here. Finally, the Defendants have married and have started a family of their own.

The deportation consequences appurtenant to these cases coupled with the facts presented to the court constitute a special circumstance that justifies alternative dispositions. If this Court insists that the Defendants' convictions be recorded, they would not only be subject to the sentence appropriate to their offenses, they would also be subject to deportation. The Defendants would be forced to return to countries torn by war, religious persecution, and ethnic persecution. Imposing such a sentence would effectually

make this court an accessory to these atrocities. Furthermore, such consequences would be much more severe than those an equally situated American citizen would suffer. Surely that result is not "justice" in the American sense of the word, nor does it reflect what America truly is about. It is the order of this court that in the furtherance of justice, a continuance for dismissal is appropriate to dispose of each case.

1996 WL 509690
(Cite as: 1996 WL 509690 (Minn.App.))

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

STATE of Minnesota, Appellant,

v.

Fakhri VAHABI, Respondent (C7-95-1795),
Hamid Reza Vahabi, Respondent (C9-95-1796).

Nos. C7-95-1795, C9-95-1796.

Sept. 10,1996.

Petition for Review Granted Dec. 11,1996.

Hubert Humphrey, St. Paul, MN.

James C. Backstrom, Albert I. Usumanu, Hastings, MN.

Jeffrey Sheridan, Inver Grove Heights, MN.

Considered and decided by K.LAPHAKE, Presiding Judge, AMUNDSON, Judge, and HARTEN, Judge.

UNPUBLISHED OPINION

AMUNDSON, Judge.

*1 The state appeals from stays of adjudication imposed over the prosecutor's objection. This court consolidated the appeals, then stayed them pending the supreme court's decision in State v. Krotzer. The supreme court has issued its opinion, State v. Krotzer, 548 N.W.2d 252 (Minn.1996), and the stay of these appeals has been vacated. We affirm

FACTS

Respondents Fakhri and Harnid Vahabi were charged with various counts of wrongfully obtaining public assistance. Beginning in 1991, the Vahabis received public assistance from Dakota County, in the form of family general assistance benefits, food stamps, and rent subsidies. The state also alleged that the Vahabis misrepresented their income and assets to obtain these benefits. The state alleged that Hamid Vahabi was self-employed in a profitable business and had also worked for another company. The Vahabis also allegedly concealed their ownership of six vehicles and large amounts of cash. The complaints alleged that the Vahabis fraudulently obtained $21,453 in public assistance.

The trial court, over the prosecutor's objection, deferred sentencing on the Vahabis' guilty pleas on the understanding that if they made full restitution within a year, a petty misdemeanor conviction . would be entered. The court cited its concern that if felony convictions were entered, deportation proceedings against the Vahabis would deprive the :county of restitution. The state later appealed the petty misdemeanor sentences, and this court reversed. *See State v. Vahabi, 529* N.W.2d 359 (Minn.App.1995).

Following the reversal of the petty misdemeanor sentence, the trial court determined that it had authority to stay adjudication. The court placed the Vahabis on probation for zero to three years, and ordered them to pay $21,453 in restitution and a $100 fine. The court stayed adjudication in the interests of justice, due to the threat of deportation if the Vahabis acquired a criminal record, and the effect this could have on the county's ability to recover restitution. This appeal followed.

DECISION

The supreme court has held that the trial courts have inherent judicial authority to stay adjudication of a criminal conviction. State v. Krotzer, 548 N.W.2d 252, 254-55 (Minn. 1996). The court reasoned:

> The district court's determination that Krotzer's situation warranted unusual judicial measures is well-supported by the special circumstances of Krotzer's case. It appears that the court strongly disagreed with the prosecutor's decision to file charges against Krotzer, and felt that justice would not be served by giving Krotzer a criminal record as a predatory sex offender. Although the court did not act pursuant to any express Minnesota rule or statute, its decision to stay adjudication of Krotzer's charge fell within the "inherent judicial power" we have repeatedly recognized, and was necessary to the furtherance of justice in Krotzer's case.

Id. (footnote omitted).

*2 The state argues that "special circumstances" warranting "unusual judicial measures" are not presented in this case. In Krotzer, the supreme court did not attempt to define the "special circumstances" warranting a stay of adjudication.

The court noted the presence of mitigating factors, prompting the trial court's opinion that the offense should not have been charged, and "that justice would not be served by giving Krotzer a criminal record as a predatory sex offender." *Id.* at 254.

The Vahabis' offense is not mitigated, as was the offense in Krotzer. They obtained public assistance in amounts apparently greater than the typical offense, and with more

egregious misrepresentations. But the normal criminal sentence would also subject them to consequences much more serious than *in Krotzer.* They are subject to deportation for acquiring a criminal record, and their deportation would likely deprive the county of a reasonable chance to recover restitution. This presents "special circumstances" of a different kind, but well within the rationale of *Krotzer. Thus,* we conclude that it was within the trial court's inherent judicial power to stay adjudication in these cases.

Affirmed.

HARTEN, Judge (dissenting).

Because I would reverse the district court's stay of adjudication of the individual charge brought against each appellant, I respectfully dissent.

The rationale for my position is set forth in my dissent in State v. Foss, --- N.W.2d ---- (Minn.App. Aug. 27, 1996). Here, as in Foss, and as in the unpublished decision of this court in State v. Hauer, No. C5-96-249 (Minn.App.1996), by relying on its inherent power to grant stays of adjudication that reach beyond statutory authority and ignore prosecutorial objection, the judiciary encroaches upon the powers of the executive.

Here, the district court stayed adjudication "in the interests of justice" following appellants' guilty pleas to the wrongful and felonious obtaining of $21,453 in public assistance funds. The district court expressed concern that if appellants' guilt were adjudicated, they could be deported and thereby the county would be denied restitution. Unlike *in State v. KroLzer, 548* N.W.2d 252 (Minn.1996) (involving mandatory imposition of future reporting requirements attendant to- Krotzer's being adjudicated guilty of a criminal sex charge), here the

consequence--possible deportation--is not an integral part of the conviction for the crime charged. Rather, deportation is a separate personal consequence that could affect appellants by operation of the federal immigration laws. Moreover, the instant case introduces another hazardous element beyond those in Krotzer, Foss, and *Hauer,* to-wit, the exercise of inherent judicial power to accommodate quick payment of restitution. Would the same accommodation be given an indigent person?

In my Foss dissent, among other things, I wrote:

> With no clear restrictions and a willing judiciary, inherent power stays of adjudication could become *routinely* administered, and, despite the prosecutor's objection, the executive _ function thereby *routinely* subjugated * * *.

*3 (Emphasis added.)

> [T]here is a probability that stays of adjudication upon common causes, once approved, will become *routine,* despite objection by the prosecution.

(Emphasis added.) Since *Krotzer*, as but one judge of this court, I have encountered three more cases involving inherent power stays of adjudication over the objection of the prosecution. I regret that my remarks about the practice becoming routine now appear to have been prescient. Krotzer is read to allow unrestrained exercise of inherent judicial power--a power traditionally immune from remedy by both the legislative and the executive branches of government. Or is it? Indeed, will the executive and legislative branches long remain paralyzed by this application of inherent judicial powers that enables the judiciary to decline its fundamental duty to adjudicate? This is a perilous business.

I urge that the supreme court revisit *Krotzer in* the context of the instant case.

END OF DOCUMENT

1996 WL 940208
(Cite as: 1996 WL 940208 (Minn.))

Only the Westlaw citation is currently available.

Supreme Court of Minnesota.
STATE of Minnesota, Appellant,
v.
Fakhri VAHABI, Respondent, Hamid Reza Vahabi, Respondent.
Nos. C7-95-1795, C9-95-1796.
Dec.11,1996.

ORDER

KEITH, Chief J.

*1 Based upon all the files, records and proceedings herein, IT IS HEREBY ORDERED (1) that the petition of the State of Minnesota for further review of the decision of the Court of Appeals be, and the same is, granted, and (2) that the decision of the Court of Appeals filed September 14, 1996 be, and the same is, reversed and the matter is remanded to the district court for further proceedings. The request of the Minnesota County Attorneys Association to serve and file a brief as amicus curiae is denied.

The issue on this appeal, like the issue in State v. *Hauer,* Case No. CS-96- 249, filed herewith, is whether the trial court, in staying adjudication for felony theft by wrongfully obtaining public assistance, misinterpreted our recent decision *in State v. Krotzer,* 548 N.W.2d 252 (Minn.1996). The trial court in the instant case apparently stayed adjudication partly *in* order to prevent the deportation of defendants based on their having a criminal record. Defendants have three children, all of whom are American citizens. While it may be that this is an

unfortunate indirect result of the convictions, if they are not stayed, it also seems clear that an argument can be made that in almost every criminal case in which a parent is sent to prison the children and other dependents of the defendants suffer in some significant way. The trial court also tried to justify the stay in terms of a benefit to the state by pointing out that if the defendants were deported, then the state would not have a reasonable chance of obtaining restitution. Defendants are not entitled to any special consideration in this regard, especially since indigent defendants presumably would not be given the same sort of consideration.

As we said in State v. Foss, --- N.W.2d ---November 21,1996}:

> It was not our intention [in Krotzer] that mere disagreement by the trial court with the prosecutor's exercise of the charging discretion would constitute "special circumstances." Rather, it was our intention that the inherent judicial authority recognized in that case be relied upon sparingly and only for the purpose of avoiding an injustice resulting from the prosecutor's *clear abuse of discretion* in the exercise of the charging function.

In summary, we find nothing in the record to support the conclusion that "special circumstances" like those *in Krotzer* were present in this case or that the prosecution in any way abused its broad discretion in charging the defendants with felony theft by wrongfully obtaining public assistance.

Reversed and remanded to trial court for further proceedings.

END OF DOCUMENT

Not Reported in N.W.2d
(Cite as: 2002 WL 338251 (Minn.App.)

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

STATE of Minnesota, Appellant,

v.

Sergey Mikhaylovich SELYUKOV, Respondent, Defendant,
Elvira (NMN) Zderchuk, Defendant, Respondent.

Nos. C1-01-1656, C5-01-1658.

March 5, 2002.

Anoka County District Court, File No. K8994774.

Mike Hatch, Attorney General, St. Paul, MN; and Robert M.A. Johnson, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, MN, for appellant.

Steven J. Meshbesher, Meshbesher & Associates, Minneapolis, MN, for respondents.

Considered and decided by HARTEN, Presiding Judge, ANDERSON, Judge, and STONEBURNER, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge.

***1** The state argues that the district court inappropriately continued charges against respondents for dismissal over the prosecutor's objections. Because there are no special circumstances involving abuse of prosecutorial discretion in charging respondents, we reverse and remand for trial.

FACTS

Respondents, who were admitted to the United States as refugees, [FN1] are charged with aiding and abetting theft by false representation in excess of $35,000 in violation of Minn.Stat. ß 609.52, subds. 2(3)(i) and 3(1) (Supp.1999), and aiding and abetting theft by swindle in excess of $35,000 in violation of Minn.Stat. ß 609.52, subds. 2(4) and 3(l) (Supp.1999). Although they have not been tried and have not entered guilty pleas, respondents have admitted obtaining $99,000 from the Sheet Metal Worker's Credit Union in Fridley.

> FN1. A "refugee" includes a person who possesses a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. ß 1101(a)(42) (1994).

On the day that they were scheduled to be tried, the district court, over the prosecutor's objection, continued the charges for dismissal, citing full payment of restitution, respondents' remorse, lack of criminal history, family circumstance, age, and amenability to probation as "special circumstances"

justifying that disposition. The state appealed and this court reversed, holding that none of the factors listed by the district court qualified as "special circumstances" and that there was no evidence that the prosecution had abused its charging discretion. *State v. Selyukov,* Nos. C5-00-1617, C9- 00-1619, 2001 WL 96180 (Minn.App. Feb. 6, 2001), *review denied* (Minn. Apr. 17, 2001). We noted that the district court had not listed deportation consequences of conviction as a special circumstance and attributed that omission to the district court's presumed awareness of case law holding that deportation could not be deemed a special circumstance.

On remand, the district court once again continued the charges for dismissal over the prosecutor's objection. The district court acknowledged that there is no abuse of the prosecutor's charging discretion in this case but concluded that because respondent's alien status makes deportation "virtually automatic" and because respondents "would be forced to return to countries torn by war, religious persecution and ethnic persecution," recording respondents' convictions would make the district court "an accessory to these atrocities." Invoking the court's "inherent power to grant a continuance for dismissal where 'special circumstances' exist and [when] it is necessary to the 'furtherance of justice,' " the court held that the "immigration considerations present in these cases constitute the 'special circumstances' necessary to justify alternative disposition." The state appeals.

DECISION

Inherent powers of a court are "those powers which, though neither granted to, nor withheld from them by the state constitution and not found in any other source of law, must

nonetheless be conceded to the judiciary as a separate department of government because their exercise is deemed absolutely essential for the performance of the court's constitutionally mandated mission." Felix F. Stumpf, *Inherent Powers of the Courts Sword and Shield of the Judiciary* 5 (1994) (quoting *Winters v. City of Oklahoma City*, 740 P.2d 724, 728 n. 1 (Okla.1987)(Opala, J., concurring and dissenting in part)). Because case law in Minnesota clearly controls the district court's authority to stay adjudication or continue charges for dismissal over the prosecutor's objection, the issue is discussed in terms of caselaw, not the court's inherent power.

***2** A district court may stay adjudication [FN2] of a criminal conviction over the prosecutor's objection without violating the separation-of- powers doctrine in cases involving special circumstances where such disposition is necessary to the furtherance of justice. *State v. Krotzer*, 548 N.W.2d 252, 254-55 (Minn.1996). The special circumstances justifying such disposition must, however, involve an abuse of prosecutorial discretion in charging. *State v. Foss*, 556 N.W.2d 540, 541 (Minn.1996) (stating that it was supreme court's intention that inherent judicial authority recognized in *Krotzer* be relied on sparingly and only for the purpose of avoiding an injustice resulting from the prosecutor's clear abuse of discretion in the exercise of the charging function); *State v. Leming*, 617 N.W.2d 587, 589 (Minn.App.2000) (holding that a court may stay adjudication only when special circumstances show a clear abuse of discretion by the prosecutor in the exercise of the charging function); *State v. Prabhudail*, 602 N.W.2d 413, 414 (Minn.App.1999) (citing *Krotzer* and *Foss* in holding that in absence of prosecutorial abuse of discretion, possible deportation consequences are not special circumstances

justifying continuance for dismissal), *review denied* (Minn, Jan. 18, 2000).

> FN2. We have stated that a continuance for dismissal and a stay of adjudication are functionally equivalent. *State v. Prabhudail*, 602 N.W.2d 413, 414 (Minn.App.1999), *review denied* (Minn. Jan. 18, 2000). We note, however that in this case respondents have not entered guilty pleas so that the case is not, as respondents argue, at the disposition phase. The analysis of the propriety of a continuance for dismissal or stay of adjudication is nonetheless identical.

Respondents argue that there was an abuse of the prosecutor's charging discretion in this case because the prosecutor "continued to charge the defendants knowing the harsh consequences that would result." We disagree. The district court found, and respondents do not dispute, that the charges brought by the prosecutor were appropriate for the conduct alleged. Under these facts, the district court correctly concluded that there has been no abuse of the prosecutor's charging discretion. Because controlling case law clearly establishes that special circumstances justifying continuance for dismissal over the objection of the prosecutor *must involve* an abuse of the prosecutor's charging discretion, the district court inappropriately continued the charges for dismissal in this case.

Respondents and the district court argue that deportation consequences are disproportionately harsh in these cases, relying on *Krotzer*, which affirmed a stay of adjudication

where there was no abuse of prosecutorial discretion. *See* *Krotzer*, 548 N.W.2d at 254-55. The supreme court clearly modified and narrowed the holding of *Krotzer* in *Foss* to require that the district court can only stay adjudication or continue for dismissal over the prosecutor's objection where the prosecution has clearly abused its charging discretion. *Foss*, 556 N.W.2d at 541. Furthermore, the circumstances in this case are distinguishable from the circumstances in *Krotzer*, because Krotzer's registration as a sexual predator was a direct consequence of conviction of criminal sexual conduct. 548 N.W.2d at 253 n. 1. Arguably, neither the purposes of criminal law nor sexual-predator-registration law would have been served by the conviction and registration of Krotzer, who had consensual sex with another teenager in the context of an ongoing relationship approved of by the victim's mother. *See id.* Likewise, the crimes involved in this case are far different from a $10 offer to the undercover-police prostitute-look-alike that led the dissent in *Prabhudail* to argue the unjustness of deportation as a consequence for such acts. 602 N.W.2d at 415- 20. The instant case involves crimes found by the district court, in its order denying respondents' omnibus motions to dismiss the charges because of the deportation consequences, [FN3] to have involved a sophisticated and substantial course of criminal activity, undercutting any persuasive value of the dissenting opinion in *Prabhudail* this case.

FN3. The judge who presided at the omnibus hearing is not the same judge who continued the cases for dismissal.

***3** When this court held, in *Vahabi,* that deportation consequences present special circumstances "well within the rationale of *Krotzer,*" [FN4] the supreme court granted review and reversed, declining to consider deportation consequences "special circumstances" noting that deportation is an "unfortunate, indirect result of conviction." *State v. Vahabi* Nos. C7-95- 1795, C9-95-1796, 1996 WL 940208, at *1 (Minn. Dec. 11, 1996). The supreme court subsequently reiterated its holding that deportation is not a direct consequence of a guilty plea, in the context of determining the intelligence of a guilty plea. *Alanis v.. State,* 583 N.W.2d 573, 578 (Minn.1998) (noting that deportation is not a direct consequence of guilty plea because deportation is neither definite, immediate, nor automatic). We cited *Alanis* for the proposition that deportation is a collateral consequence of criminal conviction when we held in *Prabhudail* that "[a]bsent evidence of a prosecutor's clear abuse of discretion in the charging function, deportation consequences are not special circumstances justifying a continuance for dismissal." *State v. Prabhudail,* 602 N.W.2d at 414-15.

FN4. *State v. Vahabi,* Nos. C7-95-1795, C9-95-1796, 1996 WL 509690, at *2 (Minn.App.), *review granted* (Minn. Dec 11, 1996).

It is undisputed that the charges in the instant cases fall squarely within the type of crimes for which the federal law prescribes deportation. The parties agree that the crimes charged constitute aggravated felonies within the meaning of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, ß 101(a)(43), 8 U.S.C. ß 1101(a)(43). Pursuant

to that act, an alien who has committed an aggravated felony is presumptively subject to special expedited-removal proceedings. 8 U.S.C ß 1228 (1994 ed., Supp V (1999)). But, as the state points out, respondents may still be eligible for discretionary relief from deportation afforded in the federal system, such as asylum. *See* 8 U.S.C. ß 1158 (providing guidelines for asylum). And federal judicial review in the form of habeas corpus relief may also be available to respondents. *Immigration & Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 121 S.Ct. 2271, 2287 (2001) (holding that federal habeas corpus jurisdiction, under 28 USC ß 2241, continues to exist after the 1996 act.). Deportation consequences are not imposed as part of a state court sentence, and possible avenues of relief are afforded respondents in the federal system. Nonetheless, the district court distinguished this case by implying that deportation is a *direct* consequence of conviction in state court, or, in the alternative, that the distinction between direct and collateral consequences is no longer a meaningful distinction. We disagree. Despite the fact that the Rules of Criminal Procedure have been changed since the decision in *Alanis* to now require that the district court inquire, prior to accepting a plea of guilty, whether a defendant has been told and understands the deportation consequences of a guilty plea, [FN5] *Alanis* has not been overruled and remains authoritative precedent. The deportation consequences depend on the independent action of the federal authorities pursuant to a presumably valid federal law and federal procedures. Any changes in federal deportation law, or interpretation of such law, must come from Congress or the federal courts.

FN5. Minn. R.Crim. P. 15.01(10)(c).

***4** In this case, the district court assumes that the federal government will initiate deportation, relief from deportation afforded in the federal system will not be granted, respondents will be required to return to the same regions in their country of origin from which they originally fled, and the conditions in those regions at the time of deportation will pose a danger of imminent harm to respondents. The fact that the district court must assume so much highlights the collateral nature of the consequence.

In the instant case, because the exercise of the prosecutorial function is not so unjust as to warrant perversion of standard disposition procedures, the deportation consequences here are not special circumstances within the rationale of *Krotzer.* Any change in the current state law, to allow some or all non-citizen criminals to avoid prosecution or conviction, should come from the legislature or supreme court, with clear guidance to the lower courts delineating how to apply such a change.

We reverse and remand for trial. In the event respondents are found guilty, or enter pleas of guilty, sentencing shall be in accordance with standard procedures that do not include a stay of adjudication over the prosecutor's objection.

Reversed and remanded.

2002 WL 338251 (Minn.App.)

END OF DOCUMENT

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-1656 and C5-01-1658

State of Minnesota,

Respondent,

vs.

Sergey Mikhaylovich Selyukov
and Elvira (NMN) Zderch,

Petitioners.

ORDER

Based upon all the files, records and proceedings herein, IT IS HEREBY ORDERED that the petition of Sergey Mikhaylovich Selyukov and Elvira (NMN) Zderchuk for further review be, and the same is, denied.

Dated: May 14, 2002

BY THE COURT:

S/

Kathleen A. Blatz
Chief Justice

State of Minnesota County of Anoka District Court

CCT	List Charge Statute ONLY	M.O.C.	GOC
1	609.52, Subd. 2(3)(i)	U1051	X
2	609.52, Subd. 2(4)	U1061	X

CTY ATTY. FILE NO.	CONTROLLING AGENCY	CONTROL NO.
F99-361A&B	MN0020600	99-98939
COURT CASE NO.		DATE FILED

☐ Domestic Assault ☐ Amended
☐ Tab Charge Previously Filed

COMPLAINT ORDER OF DETENTION,

PROS ATTY PH: 612-323-5642

STATE OF MINNESOTA FELONY,
PLAINTIFF,

vs.

NAME: first, middle, last	Date of Birth
SERGEY MIKHAYLOVICH SELYUKOV	10/13/74
EVIRA (NMN) ZDERCHUK	5/19/80

SJIS COMPLAINT NUMBER
02-11-0-050301
02-11-1-050302

DEFENDANTS ANOKA CTY

COMPLAINT

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant(s) committed the following

offense(s). The complainant states that the following facts establish PROBABLE CAUSE:

Your complainant, Rick Crestik, is an investigator employed by the City of Fridley Police Department. In that capacity, your complainant has reviewed written reports of the Fridley Police Department, has conducted an investigation of his own, and learned the facts stated herein.

On May 28, 1999, Fridley Police responded to a theft by fraud report occurring at the Sheet Metal Worker's Credit Union located at 6574 University Avenue NE, Fridley, Anoka County, Minnesota. Police spoke to the credit union branch manager, Jim Damato, who pointed out the male suspect who was identified as Sergey Mikhaylovich Selyukov (DOB: 10/13/74), of Eagan, Minnesota. While police were investigating, a female identified as Elvira Zderchuk (DOB: 5/19/80), of Ramsey, Minnesota, the fiancé of Selyukov, entered the credit union branch. Damato informed police that Selyukov opened a checking account at the Maplewood branch of the credit union on April 14, 1999. (The account was opened with $9.00). Thereafter, he made purported deposits into the account at the Fridley branch on May 21, 1999, in the amount of $35,000 and on May 24, 1999, in the amounts of $12,000 and $52,000 by way of three personal checks written to him and drawn on the TCF checking account of Elvira Zderch. As a result, Selyukav's Sheet Metal Worker's Credit Union account was credited for the three purported deposits totaling $99,000. Between May 21 and 28, 1999, Selyukov then withdrew over $90,000 from the SheetMetal Worker's Credit Union account in the form of money orders and checks payable to himself and/ or Elvira Zderchuk. (The account had a balance of $3,100 as of May 28, 1999). The three purported deposit checks totaling $90,000 on the Zderchuk account are closed account checks,

Zderchuk's account having been closed by TCF bank on May19 1999, due to fraudulent activity. Your complainant's investigation shows that Selyukov and Zderchuk are under investigation for a similar theft by fraud occurring in Maplewood. Your complainant has further learned that $58,000 of the $99,000 taken has been forwarded to, or deposited into, a Ukranian bank account. Your complainant believes that the balance has been spent or otherwise disbursed. The Sheet Metal Worker's Credit Union has suffered a loss of approximately $99,000 as a result of the fraud.

1. In a post-Miranda statement, Sergey Mikhaylovich Selyukov (DOB: 10/13/74), admitted that he knew the TCF account was closed when the checks were written and deposited into his Sheet Metal Worker's Credit Union account. He said that he took the money from the credit union account because he needed the money to pay for his wedding and a house. He admitted that he knew what he was doing was wrong and said that he would pay everything back.

2. In a post-Miranda statement, Elvira (nmn) Zderchuk (DOB: 5119180), admitted that she knew there was no money in her TCF Bank account to cover the checks that she wrote to Selyukov to deposit into his Sheet Metal Worker's Credit Union account.

The foregoing facts constitute your complainant's basis for believing that on or about the 21st through 28th days of May, 1999, in the City of Fridley, County of Anoka. State of Minnesota, the defendants, SERGEY MIKHAYLOVICH SELYUKOV. (DOB: 10/13/74), and ELVIRA (NMN)

ZDERCHUK, (DOB: 5/19/80), while aiding, advising. counseling or conspiring with each other:

FOR A FIRST COUNT: obtained possession of property of another in excess of $35.000, namely approximately $99.000 in United States currency from the Sheet Metal Worker's Credit Union, by intentionally deceiving the credit union with a false representation which was know to be false, made with intent to defraud, and which did defraud, namely the issuance of three checks in the aggregate amount of $99,000 drawn on the TCF Bank account of Elvira Zderchuk and the deposit of same into the Sheet Metal Worker's Credit Union account of Sergey Mikhaylovich Selyukov, knowing that Zderchuk was not entitled to draw upon the account or to order the payment of said checks, there being insufficient funds in the account to do so; and

FOR A SECOND COUNT: by swindling, whether by artifice, trick, device, or any other means, obtained property of another in an aggregate amount in excess of $35,000, namely approximately $99,000 in United States currency from the Sheet Metal Worker's Credit Union.

Said acts constituting the offense of:

COUNT ONE: THEFT BY FALSE REPRESENTATION (THEFT BY CHECK) IN EXCESS OF $35,000
COUNT TWO: THEFT BY SWINDLE IN EXCESS OF $35,000

in violation of Minnesota Statutes:

COUNT ONE: 609.52, Subd. 2(3)(1) and Subd. 3(1); 609.05, Subd. 1; 609.101, Subd. 4

COUNT TWO: 609.52, Subd. 2(4) and Subd. 3(1); 609.05, Subd. 1; 609.101, Subd. 4

Maximum sentence:
COUNT ONE: Twenty years imprisonment/a fine of not less than $30,000 no more than $100,000/or both
COUNT TWO: Twenty years imprisonment/a fine of not less than $30,000 nor more than $100,000/or both

---

THEREFORE, Complainant requests that said Defendant(s), subject to bail or conditions of release be:

1. arrested or that other lawful steps be taken to obtain defendant's appearance in court; or
2. detained, if already in custody, pending further proceedings;

and that said Defendant(s) otherwise be dealt with according to law.

M

COMPLAINANT'S NAME:
Rick Crestik
COMPLAINANT'S SIGNATURE
Being duly authorized to prosecute the offenses charged, I hereby approve this Complaint.
DATE: June 1, 1999
PROSECUTING ATTORNEY'S SIGNATURE:
S/James J. Weber

PROSECUTING ATTORNEY:
NAME: James J. Weber, Jr., #115046
for Alan F. Pendleton, #121538

ADDRESS: Anoka County Courthouse
Anoka, MN 55303

TITLE: Assistant Anoka County Attorney

TELEPHONE: (612) 323-5642

This COMPLAINT was subscribed and sworn to before the undersigned this _____day of_____

NAME: SIGNATURE:

TITLE:

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant(s) arrest or other lawful steps be taken to obtain Defendant(s) appearance in Court, or his detention, if already in custody, pending further proceedings. The Defendants) is/are thereof charged with the above-stated offense.

☐ **SUMMONS**

THEREFORE You, The Above-Named DEFENDANT(S), are HEREBY SUMMONED to appear on the day of at before the above-named court at *The Anoka County Courthouse to* answer this complaint.

IF YOU FAIL TO APPEAR in the response to this SUMMONS, a WARRANT for YOUR ARREST shall be issued.

☐ **WARRANT**

☐ EXECUTE IN MINNESOTA ONLY

To the sheriff of the above-named county; or other person authorized to execute this WARRANT; I hereby order, in the name of the State of Minnesota, that the above-named Defendant(s) be "apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial 0fficer is available) to be dealt with according to law.

☒ ORDER OF DETENTION

Since the above named Defenent(s) is/are already in custody: I hereby order; subject to bail or conditions of release, that the above-named Defendant(s) continue to be detained pending further proceedings

Bail:
Conditions of Release:

This ***COMPLAINT - ORDER OF DETENTION***, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this_____ day of_____
NAME: SIGNATURE:

TITLE: JUDGE OF DISTRICT COURT
Sworn testimony has been given before the Judicial Office by the following witnesses:

STATE OF MINNESOTA *County of*

ANOKA

State of Minnesota

Plaintiff,

vs.

SERGEY MIKHAYLOVICH SELYUKOV
ELVIRA (NWN) ZDERCHUK

Defendant s)

RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this COMPLAINT. ORDER OF DETENTION, upon the Defendant(s) hereinnamed.

Signature of Authorized Service Agent

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

STATE OF MINNESOTA

Plaintiff, **MOTION TO DISMISS IN THE FURTHERANCE OF JUSTICE PURSUANT TO MINN. STAT. § 631.21 .**

vs.

SERGEY MIKHAYLOVICH SELYUKOV
AND ELVIRA (NMN) ZDERCHUK

Defendants. File Nos. K6-99-4773;
K8-99-4774

TO:
THE STATE OF MINNESOTA AND ANOKA COUNTY ATTORNEY, 2100 3RD AVENUE, ANOKA, MN 55303:

PLEASE BE ADVISED that on October 28, 1999, at 1:15 p.m., or as soon thereafter as counsel may be heard, the undersigned counsel for the above-named defendants, Sergey Mkhaylovich Selyukov and Elvira Zderchuk, will move this Court for an Order dismissing the above-entitled case in the furtherance of justice.

This motion is based on the complaint, police reports, and any documents which have been filed with this Court, as well as on the Minnesota and United States. Constitutions and the attached memorandum of law.

Respectfully submitted,
MESHBESHER & ASSOCIATES, P.A.

S/

Steven J. Meshbesher
Attorney No. 127413
225 Lumber Exchange Building
10 South Fifth Street
Minneapolis, Minnesota 55402
(612) 332-2000

Dated: 10/23/99

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

STATE OF MINNESOTA
Plaintiff,

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS IN THE FURTHERANCE OF JUSTICE PURSUANT TO MINN. STAT. § 631.21

vs.

SERGEY MIKHAYLOVICH SELYUKOV
AND ELVIRA (NMN) ZDERCHUK
Defendants.

File Nos. K6-99-4773;
K8-99-4774

FACTS

On June 1, 1999, the above-named defendants were charged with one count of Theft by Check in excess of $35,000 and one count of Theft by Swindle in excess of $35,000. The complaint alleges that both defendants were involved in writing checks from a closed account, depositing them into an open account, then withdrawing the funds.

Since filing the complaint, the entire sum of money withdrawn has been reimbursed to the credit union, which is the alleged victim of the fraud.

The defendants are former residents of Moldova and Chechnia. Conviction of either of the two counts as charged would undoubtedly result in deportation. Neither defendant has any family remaining in Moldova or Chechnia.

ARGUMENT

M.S § 631.21 provides, in pertinent part:

> "The court may order a criminal action, whether prosecuted upon indictment or complaint, to be dismissed. The court may order dismissal of an action on

its own motion or upon motion of the prosecuting attorney and in furtherance of justice..."

This court has the authority to further justice by dismissing this case, with or without the prosecutor's agreement. In this case, the money which was allegedly obtained through fraud, has been repaid in full. The hardship which the defendants will endure if convicted of the charged offenses is significantly greater than the hardship imposed on an American citizen under the exact same circumctances. Deportation is the greatest loss of liberty imaginable because it is permanent. The defendants will not be released from their sentence upon completion of incarceration, but will be forever banned from returning to see their families and permanently denied the freedom in which America takes such pride.

CONCLUSION

The decision to dismiss a case to further the interests of justice is completely discretionary with this court. Neither the defense nor the prosecution have any ability to control the court's decision. Because the victims of this crime have been made whole and the State has not been burdened with the expense of a trial or even multiple court appearances, exposing the defendants to the extreme consequences of deportation would, in this case, fail to further the interests of justice.

For these reasons, the defendants request that this Court order the case dismissed in the interests of justice.

Respectfully submitted,
MESHBESHER & ASSOCIATES, P.A.
S/

Steven J. Meshbesher
Attorney No. 127413
225 Lumber Exchange
Building 10 South Fifth Street
Minneapolis, Minnesota 55402
(612) 332-2000

Dated: 10/25/99

STATE OF MINNESOTA
COUNTY OF ANOKA
State of Minnesota,

Plaintiff,

vs.

Sergey Mikhaylovich Selyukov
and Elvira (NMN) Zderchuk,
Defendants.

DISTRICT COURT
TENTH JUDICIAL DISTRICT
Court File Nos.K6-99-4773;
K8-99-4774

AFFIDAVIT OF JASON H. THOMAS

Jason H. Thomas, being first duly sworn on oath, deposes and states the following:

1. That on October 21, 1999, I had a telephone conversation with William Fisher of Gray, Plant, Mooty, Mooty & Bennet P.A., counsel for the Sheet Metal Workers Federal Credit Union.
2. That due to the cooperation of Mr. Selyukov and Ms. Zderchuk and their individual efforts, the civil matter is at a close.
3. That as of this point his client has suffered no loss.
4. That Mr. Selyukov and Ms. Zderchuk have accounted for all of the money in question and protected the Sheet Metal Workers Federal Credit Union from all future liability and/or indemnified the institution against such liability.

S/
Jason H. Thomas
Law Clerk

Subscribed and sworn to before
me this 25 day of October, 1999.

S/
Lori Wells DeGidio
Notary Public